BEFORE THE DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL), DHANBAD& THE APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972, "SHRAM BHAWAN", PO: JAGJIVAN NAGAR, DHANBAD: 826003(JHARKHAND)

**GRATUITY APPEAL NO.15/2020-A.7** 

(Arising out of Decision dated 22.01.2020 in Gratuity Application No.36(31)/2018-RLC(R) of the Controlling Authority under Payment of Gratuity Act,1972 & Regional Labour Commissioner(C),Ranchi.)

Sri Shiva Nand Gupta, "MAA NIWAS", Ashok Ashram, Dibadih, Doranda, Dist: Ranchi-834002.

.....APPELLANT

Vrs.

The Chairman, Union Bank of India, Central Office, Union Bank Bhawan, 239, Vidhan Bhawan Marg, Nariman Point, Mumbai-400021.

...RESPONDENT

### **APPEARANCE:**

Sri Shiva Nand Gupta.

Appellant himself

Ms.Priyanka Ojha, Asstt.Manager(P), Union Bank of India, Regional office, Ranchi.

Counsel for Respondent

## **GRATUITY APPEAL NO.08/2020-A.7**

The Chairman, Union Bank of India, Central Office, Union Bank Bhawan, 239, Vidhan Bhawan Marg, Nariman Point, Mumbai-400021.

....APPELLANT

Vrs

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Sri Shiva Nand Gupta, "MAA NIWAS", Ashok Ashram, Dibadih, Doranda, Dist: Ranchi-834002.

....RESPONDENT

### APPEARANCE:

Ms.Priyanka Ojha, Asstt.Manager(P), Union Bank of India, Regional office, Ranchi.

Counsel for Appellant

Star Strick Shiva Nand Gupta.

Respondent himself

#### Present:

GYAN SINGH DORAIBURU

APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT, 1972 AND
DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL), DHANBAD.

DECISION DATED 5TH NOVEMBER, 2020.

Section 7 of Payment of Gratuity Act, 1972 wherein the order of the Controlling Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Ranchi (hereinafter called CA for brevity) has been assailed.

Since the subject-matters of the memorandum of appealed by the parties are the same, both the appeals are disposed of with a common order.

In the Memorandum of Appeal, Sri Shiva Nand Gupta has averred the following:

- 1. That the Controlling Authority erred in his order dated 22.1.2020 by way of considering the rate of wages as 15 days for each year beyond 30 years of service instead of 45 days in better terms under regulation.
- That as per Hon'ble Supreme Court, order must be a clear and speaking one but in the present case the Controlling Authority has erred in not considering the relevant orders of the Supreme Court and other sustainable legal facts and even did not give any supporting reason for depriving him from applicability of the rate of 45 day's wages for each year beyond service of 30 years in better terms.
- That the Controlling Authority has committed error in not considering meaning of the prefix "Additional" mentioned to join second rate of one half of a months pay for those who served beyond 30 years and deprived him from eligible wages of 45 days for each year beyond service of 30 years.
- 4. That at the time of superannuation, he was governed by the service regulation of Union Bank of India. Thus by default he is falling under Union Bank of India(Officers) service regulation 1979, which provides better terms in two ways. The first one is rate of wages of gratuity per year is more(one month's pay/wages for each year) and Second is, it removed the maximum limit of gratuity for officers/employees who have worked for more than 30 years. Hence, the appellant is coming under the purview of sub-section 5 of section 4 of the P.G.Act, 1972 read with section 14 of the P.G.Act for the purpose of gratuity calculation. Sub-section 5 of section 4 of the P.G.Act, 1972 says "Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."
- 5. That in section 4 of the P.G.Act, 1972 terms have been put forth for payment of gratuity. Sub-section 1 deals with the eligibility, sub-section 2 deals with the rate of gratuity, sub-section 3 deals with the maximum permissible limit under the Act and sub-section 4 deals with the terms of the accidental cases. There are the basic minimum statutory terms of gratuity for eligibility, rate of gratuity and maximum limit and also in respect of accidental cases. If any better terms are given by employer i.e. increase in the number of days of wages, increasing/removing the upper limit or employer can reduce the eligibility period from minimum 5 years to lesser term of years.

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So any better term of gratuity can override the sub-sections of section 4 of the P.G.Act only. That is why sub-section 5 of section 4 is called non-obstente clause which overrides all other sub-sections of section 4.

- 6. That the Bank management under the scope of section 4(5) of the P.G.Act framed/prepared its gratuity scheme with intention to provide gratuity in better terms and terms means all terms. As regard to rate of wages under UBI-USR-1979 it has admittedly stated as one month's pay for each year upto 30 years(maximum upto 30 years). This base rate would continue beyond 30 years too as provisions of the Act has not restricted payment of gratuity after 30 years. Thus additional rate of wages stated for each year as one-half i.e. 15 days for each year to be added in 30 days wages(one month). Thus it becomes a rate of 45 days wages for each year beyond 30 years. There is no logic to pay rate of one month upto 30 years but 15 days wages after 30 years. Payment of gratuity for 15 days for each year is against the intent of the Parliament which amended from time to time the provisions to increase monitory benefits to retire to co-up with the changes of economic circumstances and cycles. Thus the Controlling Authority has wrongly/erroneously considered 15 days wages for each year beyond 30 years in place of eligibility of 45 days wages for each year beyond 30 years.
- 7. That Regulation of the appellant has used the word 'rate twice and word additional has been prefixed to second rate which means that both rates cannot be read in isolation but in continuation and as such the second rate(15 days salary) is to be topped up with the first rate(30 days salary) and when combined, it becomes 30+15=45 days. That is to say the additional rate of 15 days salary which is mentioned in the Regulation leads to interpretation that it is the additional rate over and above the 30 days salary which is paid to an employee for rendering service in excess of 30 years. In other words, the additional benefit of 15 days salary is to be computed with addition of the 30 days salary. This is the correct interpretation of the payable amount of gratuity for working in excess of 30 years of completed service. Otherwise, the regulation framed to grant better terms of gratuity than the P.G.Act, 1972 will fail in its basic objective of granting better terms of gratuity."
- 8. That while referring the background of Bank's scheme for gratuity to its employees, the work "Additional" finds place way back since 1953. The Sastry Award of 1953 gave two alternatives:

One month's salary for each year of service subject to a maximum of 15 months salary or



ii) Half a month's salary for each year of service with no maximum limit.

It was submitted that the banks preferred the later course as it would give a little more to people with longer service than 30 years as case which not infrequently happens in bank service.

The major banks had no objection to the first alternative if the workmen so desired and thus by Para No.393 of Sastry Award, the rate of one month's pay for each year of service subject to a maximum of 15 months' pay was decided as months gratuity. Further Sastry award of 1953 by Para No.393 decided that long service should be specially recognized. It reads as under:-

"We are further of opinion that substantially long service should be specially recognized and we therefore direct that where a workman has put in service over 30 years he should be paid an extra amount at the rate of additional half of a month's pay for each completed year of service beyond 30 years. To that extent the maximum provided in his case will be increased."

It is to be noted specially that the sentence which writes that special recognition for longer service stipulates extra amount at the rate of additional half of a month's pay for each completed year. The intent is very clear that the service beyond 30 years is to be recognized and rewarded by extra Amount at the Rate of Additional Half Month's pay. These two words extra amount and additional rate are as clear as day light that intent is to give extra amount as additional rate on the base rent of one month per year. This clearly meant one and half month's pay per year of service beyond 30 years. After Sastry award the Desai Award of 1962 by Para No.3.82 continued to write the same language and words Extra and Additional to emphasize that the rate of gratuity should be one and a half months pay beyond 30 years as special recognition to longer service.

That the controlling authority has committed error in considering additional rate of 15 days above the base rate of 30 days which would continue beyond 30 years also because provisions of the Act do not restrict payment of wages upto 30 years but it allows payment for each year. The controlling authority has ignored the applicability of the provisions of the Act when respondent failed to obtain exception notification from Appropriate Authority prescribed under the law.

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10. That appellant wants to make it clear that he is not giving meaning of one-half as one and half but giving the same meaning as 15 days only but these 15 days are additional incentive to those who work beyong 30 years of service. Respondent has no authority to restrict base rate only upto 30 years because law does not restrict payment of gratuity upto 30 years but permits payment irrespective of years.

In support of claim, the appellant has cited various orders passed by the Controlling Authories and Appellate Authorities and finally prayed to modify the order of the Controlling Authority dated 22.1.2020 and provide relief in calculating the gratuity by considering the rate of wages for each year as 45 days instead of 15 days in better terms beyond 30 years.

To the contrary, the employer-Union bank of India submits the following :-

- 1. That the learned Controlling Authority misconstrued the case from a wrong angle of vision and thus come to an erroneous conclusion.
- 2. That the learned Controlling Authority failed to appreciate and did not appreciate the case made out by the Bank management.
- That the Controlling Authority while passing the impugned order has failed to appreciate the fact that the application filed by Sri Gupta is delayed by about 3 years and therefore, the application being hopelessly barred by limitation, deserves to be dismissed at the preliminary stage itself.
- 4. That the Controlling Authority failed to appreciate the fact that they have duly ascertained the gratuity payable both under the Gratuity Fund Rules and the P.G.Act, 1972 and since the gratuity under the P.G.Act was more beneficial, they have paid the same to Sri Shiva Nand Gupta vide Rule-5 of the Gratuity Fund Rules.
- 5. That the learned Controlling Authority failed to appreciate that the as per Joint Note/10<sup>th</sup> Bipartite Settlement dated 25.5.2015, Special Allowance with applicable DA thereon shall not be reckoned for superananuation benefits, viz pension including NPS, PF and Gratuity.
- That the Controlling Authority failed to appreciate the fact that there is no provision in the Service Regulation to calculate gratuity assuming 26 days in a month, rather one month's pay word has been used that means whole of the calendar month.
- 7. That the Controlling Authority failed to appreciate the fact that beyond 30 years of service one half of a month's pay is payable. The Non-applicant denied that additional means 45 days pay for every completed year of service beyond 30 years. It is only half month's pay in addition to what has been paid upto 30 years of service.

That the Controlling Authority failed to appreciate the fact that every Bank has its own specific Board approved Service Regulation duly published and therefore the judicial predecence cited cannot be made applicable to the instant appellants.

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- 9. That the Controlling Authority has exceeded its authority and interfered with the internal regulation vide which a better terms of gratuity was given to Sri Shiva Nand Gupta.
- 10. That the Controlling Authority failed to appreciate the fact that the applicant is estopped from raising the disputes as law of estopple applies against him because he accepted the amount of Rs.10,00,000/- earlier without any demur of protest.
- 11. That the Controlling Authority erred in exercising the jurisdiction vested in him by law.
- 12. That the Controlling Authority has failed to appreciate that an authority exercising powers under Act cannot pass orders beyond the provisions of the Act. Section 4(3) of the Payment of Gratuity Act reads as under:-
  - (3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

    That the Controlling Authority as such was precluded from assuming jurisdiction in the instant case.
- 13. That the Controlling Authority failed to take into account the relevant facts into consideration and took into account the irrelevant ones.
- 14. That the impugned judgement and decree is bad in law and in fact and/or otherwise liable to set aside.
- 15. That the Controlling Authority failed to appreciate that the application is not maintainable in law nor on facts in its rpesent form and for the reliefs claimed.
- 16. That the Controlling Authority failed to appreciate that the application is barred by limitation, waiver, estoppel and acquiescence.

## **VIEWS OF THIS AUTHORITY**

On going through the submissions of both the parties and documents filed by them, the issues to be decided by this Authority are :-

 Whether Sri Shiva Nand Gupta is entitled for gratuity for 45 days pay for each year beyond 30 years of service as per Union Bank of India(Employees')Gratuity Fund Rules as claimed by him.

Whether in the process of quantifying the amount of gratuity payable to the officer, the dearness allowance would be treated as part of pay or not and as to what would be the pay which would be taken into consideration for calculating the amount of gratuity..

There are two provisions of law which need to be considered in the process of deciding the issue involved in these cases. First is the Payment of Gratuity Act, 1972 which is a central Act (hereinafter referred as "the Act of 1972"). Second is the Gratuity Fund Rules of Union Bank of India.

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Union Bank of India Gratuity Fund Rules is furnished below:-

## 2. TABLE OF BENEFITS - II

## Contingency Gratuity Payable (Column 2)

Amount calculated at the rate of one month's salary for each year of service, subject to a maximum of 15 months' salary and where a member has completed service of over 30 years, an additional amount calculated at the rate of half a month's salary for each year of service beyond 30 years of service.

The contention of Sri Shiva Nand Gupta is that the Controlling Authority has considered the rate of wages as 15 days for each year beyond 30 years of service instead of 45 days in better terms under regulation and according to him the additional rate of 15 days salary which is mentioned in the Regulation leads to interpretation that it is the additional rate over and above the 30 days salary which is paid to an employee for rendering service in excess of 30 years, in other words, the additional benefit of 15 days salary is to be computed with addition of the 30 days salary. He has cited various judgements of the Controlling Authority and the Appellate Authority, stating therein that they have allowed 45 days beyond 30 years of service.

On simple reading of the Gratuity Fund Rules of the Union Bank of India, the amount of gratuity has to be determined as under :-

1. Upto 30 years of completed service: Maximum 15 month's salary.

2. If service is beyond 30 years : 15 month's salary plus half a month's salary

(15 days) for each year of service beyond 30 years.

From the above, it is not justifiable to add 30+15 days=45 days for the purpose of calculating the gratuity for the service beyond 30 years. The Appellant has made self interpretation of the Bank's Rules i.e. the meaning of Additional as per his opinion, which cannot be taken into consideration only on presumption. The appellant has not filed any judgement of Apex Court showing the order passed in this regard by the Controlling Authority/Appellate Authority(as citeed him in support of his claim) has been confirmed by the Apex Court.

As regards Point No.2, i.e. the dearness allowance would be treated as part of pay or not and as to what would be the pay which would be taken into consideration for calculating



Plain reading of the Gratuity Rules of Bank and the provisions of the Payment of Gratuity Act, 1972, clearly stipulates that an officer or an employee of the Bank shall be entitled for gratuity either under the Payment of Gratuity Act, 1972 or as per regulation of Gratuity Rules of Bank whichever fetches more monetary benefits to an employee or an officer.

Initially when Sri Gupta retired from service, the Bank gave him gratuity of rupees ten lakhs as that was the ceiling limit under the Act of 1972. Since the provisions under the Act of 1972 as also the Regulations of the petitioner Bank envisaged a clause that the Officer shall be entitled for the benefits under that provision which is more beneficial between the two. Based upon that when the employer-Bank calculated the payment of gratuity payable to Sri Gupta, the calculation made under the Regulations of Bank came to be more than the ceiling limit, therefore, the Bank decided to pay gratuity to him as per the calculation under the Bank's Regulations but has paid only Rs.10,00,000/- as per ceiling limit as provided under the P.G.Act, 1972 at the relevant period of time.

According to Sri Gupta, while calculating the total amount of gratuity payable to him, Bank ought to have taken the dearness allowance received by him as part of pay which would have enhanced the total amount substantially.

The contention raised by the employer-Bank is that the officer can have the option of getting gratuity either as per the calculation under the Payment of Gratuity Act with a ceiling of rupees 10 lakhs or he may avail the gratuity in terms of the Bank's Regulations. According to employer-bank, there cannot be a situation where the officer can claim the benefit under both the provisions of law and if he contends that he would get gratuity under the Act of 1972, the mode of calculation would be as provided under the said Act and taking into consideration the definition of wage as provided under the Act of 1972 if the officers choose and opt to have the benefit of the Bank's regulation the gratuity will be paid to him strictly in accordance to the mode and method of calculation as provided under the Bank's regulation.

Bank does not dispute the fact that as per Sub Section 5 of Section 4 of the Act of 1972, an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer. This in other words means if there is a scheme more beneficial framed by the employer, the officer/employee shall be entitled for gratuity strictly in accordance to the provisions of that beneficial legislation which in this case is the Regulations of



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It would be relevant at this juncture to refer to the definition of the term 'pay', 'emoluments' and 'salary' under Union Bank of India(officers) Service Regulation, 1979:-

"Pay" means basic pay drawn per month by the officer or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations"

"Salary" means aggregate of Pay and Dearness Allowances."

"Emoluments" means aggregate of salary and allowances, if any."

As regards, the calculation of gratuity of an officer is concerned it is the terminology which has been used for quantifying the gratuity which is relevant. Reading of the definition of 'pay' again does not restrict itself to the basic pay alone. It clearly indicates that term pay includes basic pay of an officer including stagnation increment and is also inclusive of any part of the emoluments which may be specifically classified as pay under these regulations. This means the emoluments that an officer was drawing would also have to be treated as part of pay. Now what the term emolument means, has to be construed from the definition of emoluments as provided in Union Bank of India(officers) Service Regulation, 1979 again while defining emoluments clearly means the aggregate of salary and allowances. Now to know what is the aggregate of salary for deciding the emoluments which could be classified as pay it becomes necessary for us to know the definition salary as provided under Union Bank of India(officers) Service Regulation, 1979 salary means aggregate of pay and Dearness Allowance.

Now from the reading of the Union Bank of India(officers) Service Regulation, 1979 defining salary, the adjective "aggregate" has been used. The term aggregate in common parlance means something which is formed by combining many. Thus, it would clearly mean that term emolument used in Union Bank of India(officers) Service Regulation, 1979 means it is not the one singular component but a combination of a few or many.

Another aspect which needs to be considered is the fact that if the framers of the regulation intended that gratuity for the efficer were to be calculated based upon their basic pay alone it would had been simply reflected in Union Bank of India(officers) Service Regulation

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one month's basic pay for every completed year of service as is specifically mentioned in the Union Bank of India(officers) Service Regulation for the purpose of calculating gratuity for an employee. The fact that term pay has been used itself gives sufficient indication that framers of the regulation intended the general term pay and it was not just confined to the basic pay alone. This also has to be seen as a deliberate exclusion of basic pay while framing Union Bank of India(officers) Service Regulation. In other words, the framers of the regulation had taken the term pay in broader perspective rather than giving it restrictive or narrow meaning confined to the term basic pay.

If the framers of the Regulations were of the view that for calculating gratuity for officers DA was not to be taken into consideration, they would have simply clarified it in the proviso as has been done in the case of 'employees' which is reflected in the Bank's regulation where in respect of an employee it has been specifically held that the gratuity shall be the average of basic pay plus DA and special allowances, whereas, so far as the officers are concerned, it has been specifically mentioned that the gratuity shall be Union Bank of India(officers) Service Regulation payable based upon the last pay drawn. Emphasis has been given on Pay. The authorities could have simply held that it would be payable on the basic pay and those allowances which are part of Pay under the Regulations. Having not done so, the term Pay would have to be given a broader and wider interpretation and the said interpretation should always be tilting towards the weaker section i.e. officers as payment of gratuity is one of those beneficial legislation enacted for the benefit of the employees and officers.

To proof that the Bank's gratuity rules is beneficial to the Appellant, we have to compare the calculation of gratuity by determining the amount of gratuity as per provisions of the Payment of Gratuity Act, 1972 and Gratuity Fund Rules of Union Bank of India, which is given below:-

# As per Payment of Grauity Act, 1972

Length of service	38 years, 1 month and 18 days rounded off to 38
	years
Last drawn wages	Rs.67,161.55(Basic pay+DA+Special Pay+ PQP+Fixed
	personal Pay+Officiating Pay+Special Allowance(GP)
	+DA on Special Allowance(GP)
Total gratuity amount	67161.55X15X38 = Rs.14,72,387.82
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	Limited to Rs.10,00,000/- which is applicable at the
91 .	time of retirement of the Appellant as per P.G.Act.
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# As per Gratuity Fund Rules of Union Bank of India

Length of service	38 years
Last drawn wages	Rs.67161.55(Basic pay+DA+Special Pay+ PQP+Fixed
o Demoled a time primistinos ties a	personal Pay+Officiating Pay+Special Allowance(GP)
t to mention here that recently t	+DA on Special Allowance(GP)
Total amount of gratuity	67,161.55 X 15 X 30 = Rs.11,62,411.44
a) For first 30 years	26
b) For beyond 30 years i.e. 8	67161.55 X 8 X 15 = Rs.3,09,976.38
years	26
Total payable amount of	Rs.14,72,388/-
gratuity(a+b)	
Amount already paid to the	Rs.10,00,000/-
applicant(as per calculation under	
the P.G.Act, 1972)	Have an artifact to have event that we have been part
Difference of gratuity amount	Rs.4,74,388/-(Rs.14,77,388-10,00,000)

From the above, it is crystal clear that the Bank's gratuity rules is beneficial to the Appellant because as per Bank's gratuity rules, he get **Rs.4,72,388/-** more than the amount of gratuity as determined under the provisions of the Payment of Gratuity Act, 1972. The Controlling Authority in his order dated 22.01.2020 has very categorically justified/clarified by giving varous examples/judgements of the Hon'ble Courts and come to the coclusion as to how the Bank's gratuity Rules is beneficial to the Appellant in comparison to the provisions of the Payment of Gatuity Act, 1972 and has rightly passed his order as per rule.

It is pertinent to mention here that the Regulations made by the Bank are laid in the Parliament and it undergoes the legislative process. The Officers' and Employees' services are governed by these Regulations. When an employee does not get gratuity as he desires, how can it be told that it is inconsistent with Payment of Gratuity Act, 1972? If an employee get an amount less than the statutorily fixed amount as per the scheme of the Employer, then, it would be told that the regulations are inconsistent with the P G Act, 1972 and the proviso of the Act would prevail over the rules or regulations framed by the employer. Thus, the Service Regulations of the Appellant Bank is a "law" which is enforceable in the Court and it is not inconsistent with Payment of Gratuity Act, 1972 as the regulation has not snatched away of the rights of the employees as far as gratuity is concerned.

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Controlling Authority while dealing with Appelant has dealt with the case in greater detail and used his wisdom logically, legally and convincingly which is praise worthy. He has passed a reasoned and speaking order wherein he has incorporate quite good amount of materials including judicial pronouncements. His decision is self-containing and a balanced one which does not suffer from any legal flaw. It is pertinent to mention here that recently the Hon'ble High Court of Chhattisgarh, Bilaspur passed order in Writ Petition (L) No. 55 of 2020 in the case of Chhattisgarh Rajya Gramin Bank taking the DA as part of Pay while calculating the amount of gratuity.

It is observed that the employer-bank has deposited a sum of Rs.6,67,555.42 towards the difference of gratuity amount including interest amount as awarded by the Controlling Authority.

In the light of the above discussions, now, I proceed to pass the following orders:

#### **ORDERS**

- The appeal filed by Sri Shiva Nand Gupta as well as Union Bank of India fail and therefore dismissed being devoid of merit and substance.
- 2. The Orders of Findings of Controlling Authority, Ranchi is affirmed as legal, congruent and in accordance with law.

Sri Shiva Nand Gupta is, therefore, directed to apply for payment of difference of gratuity amount including the interest amount of Rs.6,67,555.42 before the Appellate Authority.

Given under my hand and seal on this day of 5th day of November, 2020.

(G.S.DORAIBURU)

DY. CHIEF LABOUR COMMISSIONER (C) DHANBAD & APPELLATE AUTHORITY UNDER P.G.ACT, 1972.

#### **GOVERNMENT OF INDIA**

MINISTRY OF LABOUR AND EMPLOYMENT

OFFICE OF THE DEPUTY CHIEF LABOUR COMMISSIONER(CENTRAL)
"SHRAM BHAWAN", PO: JAGJIVAN NAGAR,
DIST: DHANBAD -826 003(Contact No.0326-2230516).

No. PGA (15)/2020.A-7

Dated: 05.11.2020

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- Forwarded to:Sri Shiva Nand Gupta,"MAA NIWAS", Ashok Ashram,Dibadih, Doranda,
  Dist: Ranchi-834002.
- The Chairman, Union Bank of India, Central Office, Union Bank Bhawan, 239,
   Vidhan Bhawan Marg, Nariman Point, Mumbai-400021.
- 3. The Regional Labour Commissioner (C), Ranchi and Controlling Authority with reference to his orders/judgements No.36(31)/2018-RLC(R).